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International Covenant on Civil and Political Rights

...: General
20 September 2018

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Human Rights Committee

Views adopted by the Committee under article 5 (4) of the Optional Protocol, concerning communication No. 2680/2015*, **

Communication submitted by:	Khairullo Saidov (represented by counsel from Freedom Now)
Alleged victim:	The author's father, Zaid Saidov
State party:	Tajikistan
Date of communication:	30 April 2015 (initial submission)
Document references:	Decision taken pursuant to rule 97 of the Committee's rules of procedure, transmitted to the State party on 17 November 2015 (not issued in document form)
Date of adoption of Views:	4 April 2018
Subject matter:	Unlawful detention and unfair trial of a prominent politician
Procedural issue:	Non-substantiation of the claims
Substantive issues:	Pretrial detention; fair trial; fair trial — legal assistance; fair trial — witnesses; presumpton of innocence; right to appeal
Articles of the Covenant:	9 (1) and (2), 11, 14 (1), (2), (3) (b) and (e) and (5), 17, 19, 22 and 26
Article of the Optional Protocol:	2

1. The author of the communication is Khairullo Saidov (hereinafter referred to as the author), who is writing on behalf of his father, Zaid Saidov, born in 1958 (hereinafter referred to as Mr. Saidov). The author claims that the State party has violated his father's rights under articles 9 (1) and (2), 11, 14 (1), (2), (3) (b) and (e) and (5), 17, 19, 22 and 26 of the Covenant. The Optional Protocol entered into force for the State party on 4 April 1999. The author is represented by counsel.[1]

* Adopted by the Committee at its 122nd session (12 March–6 April 2018).

** The following members of the Committee participated in the examination of the communication: Yadh Ben Achour, Ilze Brands Kehris, Sarah Cleveland, Ahmed Amin Fathalla, Olivier de Frouville, Christof Heyns, Ivana Jelić, Bamariam Koita, Duncan Laki Muhumuza, Photini Pazartzis, Mauro Politi, José Manuel Santos Pais, Yuval Shany and Margo Waterval.

[1] When submitting the complaint, the author informed the Committee that, at the time, Mr. Saidov was being detained at the investigation detention ward of the State Committee for National Security of

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The facts as submitted by the author

2.1 The author submits that Mr. Saidov is a prominent politician in Tajikistan. During the civil war in Tajikistan in 1992–1997, Mr. Saidov was instrumental in bringing peace to the country after a long conflict. One of the conditions of the peaceful resolution was a 30-per-cent quota for the participation of opposition leaders in government. In accordance with this quota, from 1999 to 2003, Mr. Saidov was a chairman of the State Committee for Industry and from 2002 to 2006, he served as a minister in the Ministry of Industry of Tajikistan.

2.2 From 2007 to 2013, Mr. Saidov was the chair of the Association of Manufacturers and Entrepreneurs in Tajikistan, a business group. The idea to establish a political party emerged during these years, and Mr. Saidov planned to create a political movement with centrist ideas that would support businesses. On 6 April 2013, Mr. Saidov publicly announced that he would establish a political party called "New Tajikistan". Government representatives immediately threatened Mr. Saidov and tried to stop this initiative. On 8 April 2013, Mr. Saidov was requested to appear before the State Committee for National Security, which instructed him to cease these activities. He also received threatening anonymous phone calls.

2.3 On 10 May 2013, Mr. Saidov was prevented from organizing a press conference, during which he was planning to inform the public about the threats. Several police officers took him to the city police department, where he was warned again to cease his political activities. On 19 May 2013, Mr. Saidov was detained at Dushanbe Airport upon his return from a foreign trip, arrested, and charged with several crimes. He was arrested by the State financial monitoring and anti-corruption agency. The arrest and detention violated various provisions of the Criminal Procedure Code of Tajikistan, including insofar as his arrest was only formalized 35 hours after he was detained. Since Mr. Saidov was a member of the Dushanbe City Council, he was subject to immunity unless the Council waived that immunity. Such agreement to waive his immunity was obtained 32 hours after Mr. Saidov was detained. Prior to obtaining the obligatory waiver, and in violation of his immunity, Mr. Saidov's house and office were searched, his computer and documents were seized, and he was interrogated.

2.4 Despite Mr. Saidov's right to be presumed innocent, on 20 May 2013, a day after his arrest, State-owned media outlets started a widespread campaign to discredit him and portray him as a dangerous criminal. It was announced, for example, that he had been behind the civil war[2] in Tajikistan. The criminal case against him was classified as secret, in violation of article 5 of the law on State secrets. Despite this classification, there were many programmes on television in which the investigators described the author as a criminal. Mr. Saidov was accused of crimes of a sexual nature, and the programmes also spoke of several charges of a sexual nature and were highly prejudicial to Mr. Saidov. Throughout the investigation, his right to meet confidentially with his lawyer was violated. His property, as well as property of his relatives, was seized and confiscated.

2.5 When Mr. Saidov demanded an independent forensic genetic analysis, his request was denied. Later, during the court hearing, Mr. Saidov learned that the genetic examination had been carried out, but he never saw the results of this examination. He was never able to question the results of this test, which he claims were falsified.

2.6 The defence lawyers representing Mr. Saidov were also put under pressure. Some of them received threats on their phones. The main lawyer for Mr. Saidov, Z., was arrested immediately before the trial started and was illegally detained for eight months under the false pretences of having missed a payment on a bank loan. Another lawyer, K., was beaten by an investigator, charged with an "attempt to bribe an official" on the basis of fabricated charges, and sentenced to almost four years of imprisonment and more than 287,600 somoni in fines.

Tajikistan. While there, Mr. Saidov had attempted several times to issue a power of attorney to his son to file the present complaint, but the staff of the detention ward had prevented him from doing so.

[2] Reference is made to the 1992–1997 conflict.

2.7 The Supreme Court of Tajikistan classified the court hearings as "secret". This meant that no member of the public was allowed to be present, including representatives of media outlets. The court ignored more than 15 petitions from Mr. Saidov and his lawyers, as well as clear evidence of Mr. Saidov's innocence. On 25 December 2013, Mr. Saidov was pronounced guilty on five charges under the Criminal Code of Tajikistan: unlawful deprivation of liberty (art. 131); rape (art. 138); polygamy (art. 170); fraud (art. 247); and receiving a bribe (art. 319). He was sentenced to 26 years of imprisonment and confiscation of his property. His lawyers were only able to obtain a copy of the guilty verdict when they signed a document promising not to reveal its contents.

2.8 As for the exhaustion of domestic remedies, the author submits that Mr. Saidov and his lawyers submitted more than 50 complaints during the pretrial investigation and during the court hearings. These complaints were submitted to the prosecutor's office, the Presidential Administration and the Supreme Court of Tajikistan, among others. All the complaints were either ignored or rejected. One of the last complaints was submitted under the supervisory review procedure to the Council of the Supreme Court of Tajikistan on 3 July 2014. On 1 August 2014, the Council rejected the complaint without considering it.

The complaint

3.1 The author claims that Mr. Saidov's arrest was formalized 35 hours after the initial apprehension, instead of within the legally prescribed 3 hours, in violation of the requirements of the Criminal Procedure Code of Tajikistan and the guarantees under article 9 of the Covenant. The State party further violated his right to immunity as an elected deputy of the Dushanbe City Council. The waiver of his immunity was obtained post factum, after he was interrogated, and law enforcement seized his documents, computers and other property without him being present.

3.2 Mr. Saidov was charged with two counts of fraud, both of which he claims related to business dealings during the construction of a shopping centre. Article 11 of the Covenant prohibits imprisoning someone based on the inability to fulfil contractual obligations.

3.3 The State party further violated Mr. Saidov's rights under article 14 (1) of the Covenant. According to article 273 (1) of the Criminal Procedure Code, all court hearings must be public, unless such hearings can lead to the dissemination of information classified as "secret". The circumstances of the case did not warrant a "secret" classification. Even if such classification is awarded, the court must adopt a decision to close only certain parts of the court hearings, whereas in Mr. Saidov's case, the court announced that all the proceedings would be secret.

3.4 Despite the "secret" classification, State television ran a programme on 19 and 20 May 2013, immediately after Mr. Saidov's arrest, in which he was portrayed as guilty, in violation of his right to the presumption of innocence. When the defence questioned the television agency about this programme, the agency indicated that the material had been provided by the investigative authorities. During the investigation, the State financial monitoring and anti-corruption agency also disseminated information that depicted Mr. Saidov as guilty. When the defence attorneys complained about this, they were persecuted and jailed. The author claims that these actions violated Mr. Saidov's rights under article 14 (2) of the Covenant.

3.5 During the investigation, Mr. Saidov's right to confidential meetings with his lawyers were violated for four months. The authorities simply disregarded more than 30 complaints filed by defence lawyers regarding their access to their client, without providing any kind of a response. These facts violated the author's rights under article 14 (3) (b) of the Covenant. Furthermore, when the lawyers asked for a copy of the court verdict, their request was rejected. The court demanded that they sign a non-disclosure agreement, fearing that they would make public the "illegal" court sentence. They were harassed, charged with fabricated criminal offences, prosecuted and sentenced to several years of imprisonment for defending Mr. Saidov.

3.6 The author further claims that the testimonies of more than 11 witnesses were ignored simply because the court decided that the witnesses were too close to Mr. Saidov and were "interested in the outcome of the hearings". Mr. Saidov's lawyers were denied

their right to study the findings of the forensic expert and to challenge these findings. The author contends that the State party therefore violated Mr. Saidov's rights under article 14 (3) (e) of the Covenant.

3.7 Finally, the persecution of Mr. Saidov was initiated because he and his supporters wanted to found a new political party. This persecution violated Mr. Saidov's rights under article 22 of the Covenant. In his submission, the author additionally refers to articles 17, 19, 22 and 26.

3.8 The author requests adequate compensation and that all violations against his father be remedied.

State party's observations on admissibility and the merits

4.1 On 3 February 2016, the State party provided its comments on admissibility and the merits of the communication. It submits that on 11 May 2013, the prosecutor's office in the city of Dushanbe initiated a criminal case against Mr. Saidov relating to the charge of polygamy, and his relatives were questioned.

4.2 On 13 May 2013, the members of the Association of Manufacturers and Entrepreneurs, during their meeting, decided to disband their association on the basis that their chair had "misused the association" in his "own private and political interests". This decision was taken by the Association without any "outside pressure".

4.3 On 17 May 2013, the Office of the Prosecutor General of Tajikistan sent a request to the Dushanbe City Council asking it to revoke Mr. Saidov's immunity. On 20 May 2013, the Council decided to revoke Mr. Saidov's immunity, and agreed that criminal charges should be brought against him. The law does not provide for the "mandatory participation" of the deputy in question in such revocation hearings.

4.4 Other procedural actions were conducted in accordance with the provisions of the Criminal Procedure Code of Tajikistan, including Mr. Saidov's arrest and detention. Mr. Saidov was not arrested on 19 May 2013, as he maintains. On that day, he was only "questioned". He was arrested only on 20 May, after receiving the Council's waiver of immunity. On 21 May 2013, the Firdavsi District Court decided to detain the author pending trial. Therefore, Mr. Saidov's arrest and detention did not violate his rights under article 9.

4.5 On 17 June 2013, the authorities assigned a "secret" classification to Mr. Saidov's criminal investigation. This was done to protect "State secrets",[3] since Mr. Saidov, when committing the crimes, had been a member of the Government and had access to State secrets.

4.6 The State party confirms that State television showed a programme in which Mr. Saidov was described as having received bribes in 2006. It is also confirms that the authorities issued a brochure describing the crimes committed by him. Article 19 of the Covenant, however, provides for free expression, which includes the right to "seek, receive and impart information". In addition, the receipt of bribes by Mr. Saidov was "fully confirmed" during the court hearings.

4.7 Mr. Saidov was charged with several crimes of a sexual nature, such as raping a minor, forcing a woman to perform an abortion and others. These charges were considered by the Supreme Court, but the court decided to refer them for "further investigation". This fact shows that the court hearings were unbiased and that the State financial monitoring and anti-corruption agency did not pressure the judiciary.

4.8 The allegations that Mr. Saidov could not meet with his lawyer in a confidential manner were not confirmed. It is also not true that his lawyers were beaten or persecuted because of their activities to defend the accused. K., one of the lawyers, had been charged with and sentenced for fraud in a case dating back to 2012, but this was not related to his

[3] No details are provided by the State party regarding this classification.

activities as a defence lawyer for the victim, nor does it relate to the present communication.[4]

4.9 Another lawyer for Mr. Saidov, Z., was also charged with a crime, again unrelated to his activities as a lawyer. In 2011, Z. received an illegal loan in the amount of $1 million, which he spent on "his own needs". Therefore, the criminal case against Z. has no bearing to the criminal case against Mr. Saidov.

4.10 The court hearings were closed. This was due to the fact that the court considered certain aspects of the private life of an underage victim.

4.11 Based on the charges and court hearings, the court pronounced Mr. Saidov guilty and, on 25 December 2013, sentenced him to 26 years of imprisonment. Mr. Saidov's appeal was rejected on 23 May 2014. Mr. Saidov's guilt has been fully proven in a court of law.

Author's comments on the State party's observations on admissibility and the merits

5.1 On 28 December 2016, the author provided his comments on the State party's observations. Specifically, the author claims that the meeting of the Association of Manufacturers and Entrepreneurs was called in Mr. Saidov's absence to "discredit" him by way of "unproven and unlawful accusations".

5.2 The author further confirms that Mr. Saidov's immunity was revoked after he was arrested and his property seized, and that the author was interrogated. Article 21 of the law on the immunity of deputies (representatives) of people's councils describes the procedures according to which the prosecutor's office must petition the relevant council to revoke the immunity of one of its deputies. The council then has up to 30 days to consider this petition. Despite the State party's assertion, during the consideration of this petition, the deputy in question "has a right to participate". After the adoption of the decision, the council must inform the prosecutor's office within three days. It is abundantly clear that the deputy whose immunity is being revoked must be able to participate. This right was not given to Mr. Saidov and, therefore, the Dushanbe City Council's decision was unlawful.

5.3 It is also clear that Mr. Saidov was unlawfully detained on 19 May 2013, and not just "questioned", as the State party claims. Mr. Saidov's arrest was only formalized 35 hours after his initial detention at Dushanbe Airport. During these 35 hours, the State party violated several of Mr. Saidov's procedural rights under article 9 of the Covenant.

5.4 The State party claims that, as a minister, Mr. Saidov had access to government secrets. Article 5 of the law on State secrets in force at the time lists the types of information that can be classified as "secret". No such "secret" information was revealed during the court hearings. The State party also chose to ignore article 6 of the same law, which states that information regarding the unlawful actions of government agencies and government employees cannot be classified as "secret".

5.5 The State party further uses the provisions of article 19 of the Covenant to excuse its own actions to disseminate slanderous and untrue information about Mr. Saidov. This is improper in and of itself. Furthermore, the State party ignores article 19 (3), which sets out several restrictions on this right.

5.6 The author further contends that Mr. Saidov's lawyers were also persecuted for their willingness to defend him. Z., for example, was persecuted on the basis of fabricated charges that he had not repaid a loan. At the time of the arrest of Z., the loan was being repaid on time and was secured by additional property. The Office of the Prosecutor General of Tajikistan had previously signed the results of an inspection relating to that loan,

[4] The State party describes a criminal case that dates back to 2012. K. was representing a client, O.J., who was convicted and sentenced to 14 years of imprisonment. K. then allegedly asked O.J.'s brother, O.T., for an additional $10,000 to represent O.J. during the appeal. The State party concludes that K. caused "material damage to his clients" and was charged with fraud. In the second case against K., he "persuaded" his client to pay a bribe to a judge and agreed to be a middleman in this illegal transaction. He received $1,000 from his client and was arrested "at the crime scene" in the cafeteria near the court building of the Ismoil Somoni District Court.

which had not indicated any violations. "Coincidentally", Z.'s problems started only when he started representing Mr. Saidov. Likewise, the criminal prosecution of Z. was initiated by the same State financial monitoring and anti-corruption agency, and the same investigators, as those in charge of Mr. Saidov's case.

5.7 K. has started encountering problems and faced persecution solely because of his representation of Mr. Saidov. Unfortunately, since K. is currently incarcerated, he cannot provide comments for this submission. However, it is clear that he is a victim of injustice simply for doing his job — defending his client, Mr. Saidov.

Additional observations

From the State party

6.1 On 24 February and 4 August 2017, the State party provided additional information. The author claims that during the court hearings, all defence motions were either ignored or rejected. As reflected in the court records, the court actually granted 15 motions and rejected 3 motions.[5] The three rejected motions related to removing the "secret" classification and considering the criminal case in an open court, discontinuing the criminal prosecution of Mr. Saidov, and removing the chairman of the court and other judges on the bench.

6.2 Regarding the author's complaint that the defence lawyer could not obtain a copy of the verdict, the State party submits that this document was provided on 28 December 2013. Article 350 of the Criminal Procedure Code sets a deadline of five days for delivering a copy of the verdict after it is announced.

6.3 In addition to the criminal charges Mr. Saidov had faced and been sentenced for previously, he was also charged with additional crimes, such as tax evasion, abuse of authority and fraud, and on 11 August 2015, he was sentenced to 29 years of imprisonment, which included his previous incarceration. On 20 November 2015, the Supreme Court of Tajikistan rejected his cassation appeal.

From the author

7.1 On 9 May and 17 August 2017, the author also presented additional submissions to the Committee. The author insists that the court ignored many complaints and requests from Mr. Saidov and his lawyers. The lawyers, for example, asked to call additional witnesses and to conduct a forensic handwriting examination, but all these requests were rejected. In its submission, the State party showed its willingness to mislead and lie to not only the public, but also the Committee.

7.2 The State party also misleads the Committee regarding the relevant Tajik legislation. For example, it provides the current text of article 350 of the Criminal Procedure Code, which was not yet adopted at the time. The relevant language of article 350 as it stood at the time states that a copy of the court verdict and sentence must be provided within five days to the defendant and to his or her lawyers or representatives. When Mr. Saidov's lawyers asked the court for the copy of the verdict, they were forced to sign a non-disclosure agreement pursuant to article 177 of the Criminal Procedure Code. That article gives the defendant the right to limit information he or she wants to release regarding the pretrial investigation — not the court records during trial.

[5] The State party does not provide support for this statement. Copies of the court records have been provided by the author, not the State party. These records do not support the State party's position that some of the motions were granted or denied.

Issues and proceedings before the Committee

Consideration of admissibility

8.1 Before considering any claim contained in a communication, the Committee must decide, in accordance with rule 93 of its rules of procedure, whether it is admissible under the Optional Protocol.

8.2 The Committee has ascertained, as required under article 5 (2) (a) of the Optional Protocol, that the same matter is not being examined under another procedure of international investigation or settlement.

8.3 The Committee takes note of the author's claim that he and Mr. Saidov have exhausted all effective domestic remedies available to Mr. Saidov. In the absence of any objection by the State party in this connection, the Committee considers that the requirements of article 5 (2) (b) of the Optional Protocol have been met.

8.4 The Committee has noted the author's claims under articles 9 (2), 11, 14 (5), 17 and 26 of the Covenant. In the absence of any further pertinent information on file, however, the Committee considers that the author has failed to sufficiently substantiate these allegations for the purposes of admissibility. Accordingly, it declares this part of the communication inadmissible under article 2 of the Optional Protocol.

8.5 In the Committee's view, the author has sufficiently substantiated, for the purposes of admissibility, his remaining claims, declares them admissible and proceeds with its consideration of the merits.

Consideration of the merits

9.1 The Committee has considered the communication in the light of all the information submitted to it by the parties, in accordance with article 5 (1) of the Optional Protocol.

9.2 The Committee first notes the author's claims under article 9 (1) that Mr. Saidov was arbitrarily detained for 35 hours upon his arrival at Dushanbe Airport on 19 May 2013. The author also claims that, during that time, the authorities interrogated Mr. Saidov, seized his property and searched his house and office. The State party contends that Mr. Saidov was first questioned only as a witness and was formally arrested on 21 May 2013, upon a lawful court order. The Committee recalls its general comment No. 35 (2014) on liberty and security of person, according to which arrest within the meaning of article 9 need not involve a formal arrest as defined under domestic law (para. 13). Under the provisions of this article of the Covenant, no one shall be deprived of liberty except on such grounds and in accordance with such procedure as are established by law. The Committee notes that the State party denies having arrested Mr. Saidov, claiming only that he was questioned as a witness during the period in question. However, the State party does not deny that Mr. Saidov was deprived of his liberty during the questioning. Nor does it explain when or whether Mr. Saidov was released after the initial questioning on 19 May 2013. The Committee further notes the absence of Mr. Saidov from the meeting of the Dushanbe City Council that was held, according to the State party, on 20 May 2013 and during which Mr. Saidov was stripped of his immunity as a deputy, and the lack of information regarding Mr. Saidov's subsequent arrest on 21 May 2013. In the absence of any further explanation from the State party, the Committee considers that Mr. Saidov's rights under article 9 (1) of the Covenant have been violated.

9.3 With respect to the author's claims under article 14 (1) regarding the right to a public hearing, the Committee notes the author's claims that the investigation was classified as "secret" and that the court hearings were closed. It also notes the State party's claims that the investigation was classified as "secret" because Mr. Saidov was a government minister, and that the court hearings were closed to the public because issues that were being considered by the court related to an underage person. The Committee recalls the provisions of its general comment No. 32 (2007) on the right to equality before courts and tribunals and to a fair trial, according to which all trials in criminal matters or related to a

suit at law must in principle be conducted orally and publicly.[6] Article 14 (1) of the Covenant acknowledges that courts have the power to exclude all or part of the public for reasons of morals, public order (*ordre public*) or national security in a democratic society, or when the interest of the private lives of the parties so requires, or to the extent strictly necessary in the opinion of the court in special circumstances where publicity would be prejudicial to the interests of justice.[7] The State party contends that the reason for the closed court hearings was to avoid divulging information regarding private aspects of the life of an underage victim. While the Committee can accept that there may be circumstances where it would be "strictly necessary" to close parts of a court proceeding in order to protect the private life of an underage victim, the State party has not demonstrated why it was necessary to exclude the public from other parts of the proceedings, such as those related to fraud charges against Mr. Saidov. Nor has the State party identified other bona fide "secrecy" grounds that might have justified closing part of the proceedings. In the absence of pertinent explanations from the State party, the Committee concludes that the State party placed a disproportionate restriction on Mr. Saidov's right to fair and public hearing, and therefore that his rights under article 14 (1) have been violated.

9.4 With regard to the author's claims that Mr. Saidov's rights to the presumption of innocence were violated when State television pronounced him guilty even before the trial and that, during the investigation, the State financial monitoring and anti-corruption agency also disseminated information that depicted Mr. Saidov as guilty, the Committee recalls its jurisprudence, as also reflected in its general comment No. 32, according to which the presumption of innocence, which is fundamental to the protection of human rights, imposes on the prosecution the burden of proving the charge, guarantees that no guilt can be presumed until the charge has been proved beyond reasonable doubt, ensures that the accused has the benefit of doubt, and requires that persons accused of a criminal act must be treated in accordance with this principle.[8] The State party acknowledges that it disseminated information regarding the author's guilt well before the court announced its verdict (see para. 4.6). Nor do the principles protected by article 19 excuse the condemnation of an accused as guilty by the State prior to the completion of a fair trial. In the circumstances described by the author, and given the State party's clear position on the author's guilt before the court verdict, the Committee considers that Mr. Saidov's right to the presumption of innocence under article 14 (2) has been violated.

9.5 The Committee notes the author's claims that Mr. Saidov was prevented from communicating with his counsel and defending himself through legal assistance, contrary to article 14 (3) (b) of the Covenant. Furthermore, the author claims that the lawyers did not have a full access to their client, and that they could not meet with him confidentially for four months during the pretrial investigation. The Committee recalls its general comment No. 32, according to which adequate time and facilities to meet with a lawyer are an important element of the guarantee of a fair trial and an application of the principle of equality of arms.[9] The Committee notes that, although the State party contends generally that Mr. Saidov was able to meet with his lawyers, it does not refute the author's specific claims that Mr. Saidov was denied confidential meetings during the four months of the pretrial investigation. Nor has the State party refuted Mr. Saidov's claim that he was initially interrogated without being able to consult his lawyer. The submissions from the author also contain requests from K. and T. for meetings with Mr. Saidov, such as those dated 20 May, 13 June and 13 August 2013. The Committee notes the author's claims that these requests were not responded to, an allegation that is not refuted by the State party. The Committee also notes the author's claims that the defence lawyers were harassed and criminally prosecuted for assisting Mr. Saidov. The Committee concludes that, on the basis of the information before it, Mr. Saidov was denied proper access to his lawyers and the ability to communicate with them in private,[10] in violation of article 14 (3) (b) of the Covenant.

[6] See general comment No. 32, para. 28.

[7] Ibid., para. 29.

[8] Ibid., para. 30.

[9] Ibid., para. 32.

[10] See *Gridin v. the Russian Federation* (CCPR/C/69/D/770/1997), para. 8.5.

9.6 The Committee notes the author's uncontested claim that Mr. Saidov was unable to call more than 11 witnesses in his defence, contrary to article 14 (3) (e). The author further contends that Mr. Saidov's lawyers could not study the findings of the government forensic expert witness or challenge this expert's findings. The State party has not responded to these allegations. The Committee recalls its general comment No. 32, according to which article 14 (3) (e) guarantees the right of the accused person to examine, or have examined, the witnesses against them and to obtain the attendance and examination of witnesses on their behalf under the same conditions as witnesses against them. While this right is not unlimited, it includes a right to have witnesses admitted that are relevant for the defence, and to be given a proper opportunity to question and challenge witnesses against the defence at some stage of the proceedings.[11] The Committee considers that a State party cannot discharge this obligation merely by stating that the witnesses requested were too close to the accused and were interested in the outcome. Nor has the State party explained why Mr. Saidov's counsel was not allowed to properly examine the findings of the government forensic expert. Moreover, any evidence obtained by the State party should have been shared with the defence lawyers to enable them to question its findings. In the absence of any explanation from the State party in this regard, the Committee finds that Mr. Saidov's rights under article 14 (3) (e) of the Covenant have been violated.

9.7 The Committee further notes the author's allegations that the threats and persecution that Mr. Saidov suffered at the hands of the authorities, and the cumulative violations of his procedural rights detailed above, were the result of his efforts to exercise his freedom of expression and association under articles 19 and 22 of the Covenant. Specifically, the author contends that these rights were restricted arbitrarily since Mr. Saidov was prevented from expressing his political views and outspoken positions, including through his intention and efforts to start a new political party. The Committee observes that Mr. Saidov was threatened and prosecuted immediately after announcing his intentions to form a political party and, in the end, was effectively prohibited from forming such a party. The Committee also notes the author's claims that on 10 May 2013, Mr. Saidov was blocked from organizing a press conference. In the Committee's opinion, the actions of the authorities amount to a limitation of Mr. Saidov's rights to impart information and ideas of any kind, under article 19 (2), and to freedom of association, under article 22 (1), of the Covenant. The Committee must therefore decide whether these limitations are allowed under one of the restrictions laid out in articles 19 (3) and 22 (2).

9.8 With respect to article 19, the Committee refers to its general comment No. 34 (2011) on the freedoms of opinion and expression, according to which freedom of opinion and freedom of expression are indispensable conditions for the full development of the person. Such freedoms are essential for any society and constitute the foundation stone for every free and democratic society (para. 2). The Committee recalls that article 19 (3) of the Covenant allows certain restrictions only as provided by law and necessary: (a) for the respect of the rights and reputation of others; and (b) for the protection of national security or of public order (*ordre public*), or of public health or morals. Any restriction on the exercise of such freedoms must conform to the strict tests of necessity and proportionality. Restrictions must be applied only for those purposes for which they were prescribed and must be directly related to the specific need on which they are predicated.[12] The Committee recalls that it is up to the State party to demonstrate that the restrictions on the rights under article 19 are necessary and proportionate.[13] Finally, the Committee recalls that any restriction on the freedom of expression must not be overbroad in nature, that is, it must be the least intrusive among the measures that might achieve the relevant protective function and proportionate to the interest whose protection is sought.[14] The State party contends that Mr. Saidov's guilt was fully proven in the court of law, but does not otherwise respond to the author's allegations. Nor does it dispute that the author planned to start a new political

[11] See general comment No. 32, para. 39.

[12] See general comment No. 34, para. 22.

[13] See, for example, *Pivonos v. Belarus* (CCPR/C/106/D/1830/2008), para. 9.3; *Olechkevitch v. Belarus* (CCPR/C/107/D/1785/2008), para. 8.5; and *Androsenko v. Belarus* (CCPR/C/116/D/2092/2011), para.7.3.

[14] See the Committee's general comment No. 34, para. 34.

party or that it prevented the author from founding one. The Committee considers that, in the circumstances, the prohibitions imposed on Mr. Saidov were not justified by the State party pursuant to the conditions set out in article 19 (3) of the Covenant. It therefore concludes that Mr. Saidov's rights under article 19 (2) of the Covenant have been violated.

9.9 With respect to the author's contentions under article 22, the Committee observes that, in order for the interference with freedom of association to be justified under article 22, any restriction must cumulatively meet the following conditions: (a) it must be provided by law; (b) it may only be imposed for one of the purposes set out in article 22 (2); and (c) it must be "necessary in a democratic society" for achieving one of these purposes. The reference to the notion of "democratic society" indicates, in the Committee's opinion, that the existence and operation of associations, including those which peacefully promote ideas not necessarily favourably received by the government or the majority of the population, is a cornerstone of a democratic society.[15] The State party must further demonstrate that the prohibition of an association is necessary to avert a real, and not only hypothetical, danger to national security or democratic order, and that less intrusive measures would be insufficient to achieve the same purpose.[16] Considering the fact that Mr. Saidov was de facto prohibited from starting a political party, and the absence of any explanation by the State party in this regard, the Committee considers that the restriction imposed on Mr. Saidov is disproportionate and does not meet the requirements of article 22 (2). Mr. Saidov's rights under article 22 (1) have thus been violated.

10. The Committee, acting under article 5 (4) of the Optional Protocol, is of the view that the facts before it disclose a violation by the State party of articles 9 (1), 14 (1), (2), (3) (b) and (e), 19 (2) and 22 (1) of the Covenant.

11. In accordance with article 2 (3) (a) of the Covenant, the State party is under an obligation to provide individuals whose Covenant rights have been violated with an effective remedy in the form of full reparation. Accordingly, the State party is obligated to, inter alia, to (a) quash Mr. Saidov's conviction, release him and, if necessary, conduct a new trial, in accordance with the principles of fair hearings, presumption of innocence and other procedural safeguards; and (b) provide Mr. Saidov with adequate compensation. The State party is also under an obligation to take all steps necessary to prevent similar violations from occurring in the future.

12. Bearing in mind that, by becoming a party to the Optional Protocol, the State party has recognized the competence of the Committee to determine whether there has been a violation of the Covenant and that, pursuant to article 2 of the Covenant, the State party has undertaken to ensure to all individuals within its territory and subject to its jurisdiction the rights recognized in the Covenant and to provide an effective remedy when it has been determined that a violation has occurred, the Committee wishes to receive from the State party, within 180 days, information about the measures taken to give effect to the Committee's Views. The State party is also requested to publish the present Views and to have them widely disseminated in the official languages of the State party.

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[15] See *Korneenko et al. v. Belarus* (CCPR/C/88/D/1274/2004), para.7.3.

[16] See *Jeong-Eun Lee v. Republic of Korea* (CCPR/C/84/D/1119/2002), para.7.2.